



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MARCH 15, 2023

IN THE MATTER OF:

Appeal Board No. 627150

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective September 21, 2022, on the basis that the claimant voluntarily separated from employment without good cause and, in the alternative, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to September 21, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed December 7, 2022 (), the Administrative Law Judge overruled the initial determination of misconduct and sustained the initial determination of voluntary quit without good cause.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination of voluntary quit without good cause.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked as a dental hygienist for the employer, a dental office, from September 8, 1998 through September 20, 2022.

On September 13, 2022, an argument in the workplace occurred between the claimant and a coworker. After the office manager learned about the incident,

the office manager consulted an attorney and was advised to either discharge both the claimant and the coworker or have them sign a warning document acknowledging the issues and agreeing to conduct themselves in a professional and courteous manner, to participate in training sessions to facilitate working together better, and to refrain from discussing the issues with coworkers. The warning specified that their signatures meant they agreed to move forward as indicated. The warning stated that any further complaints would subject the offending party to termination of employment. The warning did not indicate a refusal to sign the document would lead to discharge.

On September 19, 2022, the office manager gave an unsigned copy of the warning to the claimant. The claimant took it home to read it and think about it.

On September 20, 2022, the claimant and the office manager met to discuss the warning. The claimant refused to sign the warning. The office manager told the claimant that she could no longer work there if she refused to sign the warning. The claimant told the office manager that she was not resigning and she did not intend to resign. The office manager walked the claimant to the locker room in the basement to collect her belongings. The claimant gave her key to the office manager before leaving the premises.

On September 22, 2022, the office manager sent a letter to the claimant indicating that the employer accepted the claimant's resignation because the claimant refused to sign the warning.

OPINION: No appeal having been filed by the employer, we are bound by that portion of the decision of the Judge holding that the claimant did not lose her job by reason of misconduct.

The credible evidence establishes that the claimant lost her employment on September 20, 2022, when she refused to sign a warning document after the office manager told her that she could no longer work there if she refused to sign the warning. However, the did not include any space for the claimant to comment, nor did it include any language indicating that the claimant's signature would indicate only her receipt of the warning and not her agreement with the underlying allegations. These facts, establish that the claimant had good cause for leaving her employment, and her employment ended under non-disqualifying circumstances (see Appeal Board Nos. 565190 and 593681).

DECISION: The decision of the Administrative Law Judge, insofar as appealed

from, is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective September 21, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is overruled.

The claimant is allowed benefits with respect to the issue decided herein.

RANDALL T. DOUGLAS, MEMBER